KERAJAAN MALAYSIA & ORS A

v.

TAY CHAI HUAT

COURT OF APPEAL, PUTRAJAYA B
ABDULL HAMID EMBONG JCA
KN SEGARA JCA
ABU SAMAH NORDIN JCA
[CIVIL APPEAL NO: N01-12-2007]
9 SEPTEMBER 2010 C

ADMINISTRATIVE LAW: *Public servants - Dismissal of police officer - Police officer dismissed for alleged breaches of discipline occurring between 1982 and 1990 - Respondent asked to show cause in 1993 - Whether long and unexplained delay in instituting disciplinary action amounted to procedural unfairness - Failure by disciplinary authority to adequately consider respondent's written representation - Whether allegations devoid of merit - Whether public servant facing disciplinary action under General Orders 1980 entitled to oral hearing - Failure of disciplinary authority to call respondent for further clarification - Disciplinary authority fettering its discretion - Respondent denied reasonable opportunity to have his case heard - Dismissal unlawful - Public Officers (Conduct and Discipline) (Chapter D), General Orders 1980, General Orders 4(2)(f)(i), (g) & 26* D E

POLICE: *Disciplinary proceedings - Dismissal - Police officer dismissed for alleged breaches of discipline occurring between 1982 and 1990 - Respondent only asked to show cause in 1993 - Whether long and unexplained delay in instituting disciplinary action amounted to procedural unfairness - Failure by disciplinary authority to adequately consider respondent's written representation - Whether allegations devoid of merit - Whether public servant facing disciplinary action under General Orders 1980 entitled to oral hearing - Failure of disciplinary authority to keep an open mind and to call respondent for further clarification - Disciplinary authority fettering its discretion - Respondent denied reasonable opportunity to have his case heard - Dismissal unlawful - Public Officers (Conduct and Discipline) (Chapter D), General Orders 1980, General Orders 4(2)(f)(i), (g) & 26* F G H

I

PUBLIC SERVANTS: *Dismissal - Dismissal of police officer - Police officer dismissed for alleged breaches of discipline occurring between 1982 and 1990 - Respondent only asked to show cause in 1993 - Whether long and unexplained delay in instituting disciplinary action amounted to procedural unfairness - Failure by disciplinary authority to adequately consider respondent's written representation - Whether allegations devoid of merit - Whether public servant facing disciplinary action under General Orders 1980 entitled to oral hearing - Failure of disciplinary authority to keep an open mind and to call respondent for further clarification - Disciplinary authority fettering its discretion - Respondent denied reasonable opportunity to have his case heard - Dismissal unlawful - Public Officers (Conduct and Discipline) (Chapter D), General Orders 1980, General Orders 4(2)(f)(i), (g) & 26*

Between January 1982 and June 1991, the respondent was the investigation officer in the secret societies section of the Police Contingent Headquarters, Negeri Sembilan. In recognition of his selfless services he received two letters of commendation from two successive Chief Police Officers of the state in 1984 and 1989. Being directly involved in investigation into secret society activities, complaints were made against him to his superiors. He was nevertheless cleared of those allegations by his superiors. Between 1991 and 1995 he was given leave with half pay to study law. During his period of study leave, he was served with a show cause letter informing him of disciplinary action against him pursuant to General Order 26 of the Public Officers (Conduct and Discipline) (Chapter D), General Orders 1980 ("General Orders 1980") with a view to his dismissal. The letter contained five charges of alleged breaches of discipline under General Orders 4(2)(f)(i) and (g). These charges contained allegations spanning between January 1982 and September 1990. The first and second charges alleged that the respondent had corruptly accepted monies from one Chong Lee Min and one Khu Tee Sing between 1 January 1989 and 21 September 1990. In the third charge the respondent was accused of associating himself with Chong Lee Lin and Khu Tee Sing knowing that they were actively involved in illegal four-digit lottery in and around Seremban. The fourth and fifth charges were in relation to the respondent's alleged failures to take action against several persons for alleged illegal activities in or around Seremban between 1982 and 1990. The respondent in his written representation gave a long explanation complete with relevant facts and particulars which were

contained in ten appendixes, denying all the allegations made against him. He claimed that those allegations were made by persons who had been investigated by him for their involvement in four-digit illegal lottery and gambling activities. Nevertheless, the respondent was found in breach of all the disciplinary charges against him and was dismissed from the Police Force. The respondent filed this action for declarations that his dismissal was unlawful. The High Court declared the dismissal as unlawful and hence this appeal by the appellants.

Held (dismissing the appeal with costs)
Per Abu Samah Nordin JCA delivering the judgment of the court:

(1) The fourth and fifth charges seemed to allege a continuous failure by the respondent to take action against the persons named therein and to report to his superior of their illegal activities spanning over a period of more than eight years. Yet the respondent was only asked to show cause with a view to his dismissal only in 1993, about eleven years after the alleged breaches of discipline, which first occurred in 1982. (para 22)

(2) The respondent's superiors had sat idly for a long time without taking any action against him although he had been alleged of accepting monthly corrupt money since 1 January 1987 until 21 September 1990 from specific individuals. The allegations were just bare allegations devoid of any merit. The respondent did not know when those allegations were made and what statements had been given to his superiors to enable him to correct or contradict the said statements. That put him in a disadvantageous position. (para 26)

(3) A public servant facing disciplinary action under the General Orders 1980 is not, in all cases, entitled to an oral hearing. A fair hearing does not necessarily mean that there must be an opportunity to be heard orally. Whether an oral hearing is necessary will depend upon the subject matter and circumstances of the particular case and upon the nature of the decision to be made. It will also depend upon whether there are substantial issues of fact which cannot be resolved on the available written evidence. This does not mean that, whenever there is a conflict of evidence in the statement taken, an oral hearing must be held to resolve it. (para 27)

(4) General Order 26(5) confers a discretion on the Disciplinary Authority to seek further clarification on the charges against the respondent through the appointment of a Committee of Inquiry. This means that there is no total ban or prohibition for an oral hearing under the General Orders 1980. It depends on the circumstances of each case. Oral hearing is at the discretion of the Disciplinary Authority. (para 28)

(5) The allegations in the charges against him spanned over several years. There was a long and unexplained delay in instituting disciplinary action against him. The long delay in issuing the show cause letter and in instituting the disciplinary action against the respondent was not by itself a ground for holding that there was procedural unfairness. But when it was viewed together with the other facts, it should have prompted an alert Disciplinary Authority to call for further clarification to ascertain the truth of the allegations against the respondent. (para 44)

(6) The Disciplinary Authority, in exercise of its discretion, had not fairly or adequately considered the written representation by the respondent. It had not fully weighed and appreciated the respondent's representation which was not mere denials. By failing to keep an open mind and to consider calling him for further clarification the Disciplinary Authority had effectively closed its doors to the respondent and in the process fettered its own discretion. Thus, the respondent was denied the reasonable opportunity to have his case heard before the Disciplinary Authority. (para 45)

Bahasa Malaysia *Translation Of Headnotes*

Di antara Januari 1982 dan Jun 1991, responden bertugas sebagai pegawai penyiasat di bahagian kongsi gelap, Ibupejabat Polis Kontinjen, Negeri Sembilan. Sebagai menghargai kecemerlangan perkhidmatannya, responden telah dianugerahkan dua surat kepujian oleh dua orang Ketua Polis Negeri di antara tahun 1984 dan 1989. Oleh kerana beliau terlibat secara langsung dengan penyiasatan aktiviti-aktiviti kongsi gelap, beberapa aduan kepada ketua-ketua beliau telah dibuat terhadap beliau. Responden bagaimanapun telah dilepaskan dari dakwaan-dakwaan tersebut oleh ketua-ketuanya. Antara tahun 1991 dan 1995 responden telah diberi kebenaran untuk belajar undang-undang dengan separuh gaji. Apapun, dalam tempoh

pengajiannya itu, beliau telah diserahkan dengan satu surat tunjuksebab memberitahunya bahawa tindakan disiplin telah diambil terhadapnya di bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bahagian D) 1980 ('Perintah Am 1980'), bertujuan untuk membuang kerjanya. Surat tersebut mengandungi lima pertuduhan mengenai dakwaan pelanggaran disiplin di bawah Perintah-Perintah Am 4(2)(f)(i) dan (g). Pertuduhan-pertuduhan mengandungi dakwaan-dakwaan yang merangkumi tempoh masa di antara Januari 1982 dan September 1990. Tuduhan pertama dan kedua menyatakan bahawa responden telah secara rasuah menerima wang dari seorang Chong Lee Min dan seorang Khu Tee Sing di antara 1 Januari 1989 dan 21 September 1990. Dalam pertuduhan ketiga, responden didakwa telah berkawan dengan Chong Lee Lin dan Khu Tee Sing walaupun mengetahui mereka secara aktif terlibat dengan loteri haram empat nombor di Seremban dan kawasan sekitarnya. Pertuduhan keempat dan kelima adalah berkaitan dakwaan kegagalan responden untuk mengambil tindakan terhadap beberapa orang yang terlibat dalam perjudian haram di Seremban atau kawasan sekitarnya di antara 1982 dan 1990. Dalam representasi bertulisnya, responden telah memberi penjelasan yang panjang lebar dan disertakan dengan fakta-fakta dan butiran-butiran relevan, yang terkandung di dalam sepuluh apendiks, menyangkal dakwaan-dakwaan terhadapnya. Responden berhujah bahawa alegasi-alegasi terhadapnya adalah dibuat oleh orang-orang yang disiasati olehnya kerana terlibat dalam loteri haram empat nombor dan aktiviti-aktiviti perjudian. Responden bagaimanapun didapati bersalah atas semua pertuduhan disiplin tersebut dan telah dibuang dari Pasukan Polis. Berikutnya responden memfail tindakan untuk deklarasi bahawa pembuangan kerjanya adalah tak sah. Mahkamah Tinggi mengisytiharkan pembuangan kerja responden sebagai tak sah dan perayu-perayu telah merayu.

Diputuskan (menolak rayuan dengan kos)
Oleh Abu Samah Nordin HMR menyampaikan penghakiman mahkamah:

(1) Pertuduhan keempat dan kelima kelihatannya mendakwa kegagalan yang berterusan di pihak responden untuk mengambil tindakan terhadap orang-orang yang dinamakan di situ dan untuk melaporkan kepada pegawai atasannya mengenai kegiatan-kegiatan haram mereka untuk tempoh selama lebih dari lapan tahun. Walaupun begitu, responden diminta untuk menunjuk

A sebab mengapa beliau tidak boleh dibuang kerja hanya pada tahun 1993, lebih kurang sebelas tahun selepas pelanggaran disiplin yang didakwakan itu, yang berlaku buat kali pertamanya pada tahun 1982.

B **(2)** Pegawai-pegawai atasan responden, untuk sekian lama, hanya duduk bergoyang kaki tanpa mengambil apa-apa tindakan terhadap responden walaupun beliau didakwa telah menerima wang rasuah bulanan sejak 1 Januari 1987 hingga 21 September 1990 dari individu-individu tertentu. Dakwaan-dakwaan ini C hanyalah dakwaan kosong tanpa sebarang merit. Responden tidak mengetahui bilakah alegasi-alegasi tersebut dibuat dan kenyataan apakah telah diberikan kepada pegawai-pegawai atasannya bagi membolehkan membetulkan atau menyangkal kenyataan-kenyataan tersebut. Ini meletakkan beliau dalam D keadaan yang tidak seimbang.

(3) Bukanlah dalam semua kes bahawa seseorang pegawai awam yang menghadapi tindakan disiplin di bawah perintah Am 1980 itu berhak kepada pendengaran oral. Satu pendengaran yang adil tidak semestinya bermakna bahawa harus wujud peluang untuk E didengar. Sama ada suatu pendengaran oral perlu atau tidak akan bergantung kepada halperkara dan halkeadaan kes tersebut dan sifat keputusan yang dibuat. Ia juga bergantung kepada sama ada terdapat isu-isu fakta yang penting yang tidak boleh diputuskan hanya dengan berdasarkan keterangan bertulis yang F ada. Ini tidak bermakna bahawa, bilamana terdapat percanggahan keterangan dalam kenyataan yang diambil, suatu pendengaran oral mesti diadakan bagi memutuskannya.

(4) Perintah Am 26(5) memberikan budibicara kepada Pihakberkuasa G Disiplin untuk mendapatkan penjelasan lanjut berkaitan pertuduhan-pertuduhan terhadap responden melalui perlantikan Jawatankuasa Siasatan. Ini bermakna bahawa tidak wujud pengharaman atau larangan penuh terhadap pendengaran oral di bawah Perintah Am 1980. Ianya bergantung kepada halkeadaan H sesuatu kes. Pendengaran oral adalah atas budibicara Jawatankuasa Disiplin.

(5) Dakwaan-dakwaan di dalam pertuduhan-pertuduhan terhadap responden merangkumi masa yang bertahun-tahun. Terdapat I kelengahan yang panjang dan tidak diperjelaskan dalam memulakan tindakan disiplin terhadapnya. Kelengahan yang

panjang dalam memberi surat tunjuksebab dan mengadakan prosiding disiplin terhadapnya semata-mata itu tidak menjadi alasan untuk mengatakan wujudnya ketidakadilan prosedur. Namun, bilamana ianya dilihat bersekali dengan fakta-fakta lain, ia sepatutnya menyedarkan Jawatankuasa Disiplin untuk menuntut penjelasan-penjelasan lanjut bagi memastikan kebenaran dakwaan-dakwaan yang dibuat terhadap responden.

(6) Jawatankuasa Disiplin, dalam melaksanakan budibicaranya, telah gagal menimbang secara adil atau secukupnya representasi bertulis responden. Ia tidak menimbang sepenuhnya dan menilai representasi responden yang bukan merupakan penafian kosong semata-mata. Dengan Jawatankuasa Disiplin gagal bertindak dengan fikiran yang terbuka dan menimbang untuk memanggil responden untuk penjelasan lanjut, ia secara berkesannya telah menutup pintu-pintu kepada responden dan dalam proses itu telah menjejaskan budibicaranya sendiri. Responden dengan itu telah dinafikan peluang yang munasabah untuk kesnya didengar di hadapan Jawatankuasa Disiplin.

Case(s) referred to:

Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 1 CLJ 493 CA ***(refd)***

Associated Provincial Pictures Houses, Ltd v. Wednesbury Corporation [1947] 2 All ER 680 ***(refd)***

B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS 14 PC ***(refd)***

Breen v. Amalgated Engineering Union and Others [1971] 2 QB 175 ***(refd)***

Chai Kok Choi Ketua Polis Negara & Ors [2008] 1 CLJ 113 FC ***(refd)***

Ghazi Mohd Sawi v. Mohd Hanif Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

Lloyd v. McMahon [1987] All ER 1118 ***(refd)***

Mat Ghaffar Baba v. Ketua Polis Negara & Anor [2008] 1 CLJ 773 CA ***(refd)***

Najar Singh v. Government of Malaysia & Anor [1974] 1 LNS 101 FC ***(refd)***

Padfield and Others v. Minister of Agriculture and Food and Others [1968] AC 997 ***(refd)***

Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(refd)***

A *R (on the application of Ewing v. Department for Constitutional Affairs [2006] 2 All ER 993* ***(refd)***
R v. Army Board of Defence Council, ex p Anderson [1991] 3 All ER 375 ***(refd)***
Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor [2008] 4 CLJ 881 CA ***(refd)***
B *Zainal Hashim v. Government of Malaysia [1979] 1 LNS 132 PC* ***(refd)***

Legislation referred to:
Federal Constitution, art. 135(2)
Public Officers (Conduct and Discipline) (Chapter D), General Order
C 1980, GOs 4(1), (2)(f)(i), (g), 23, 26(5), 36

Other source(s) referred to:
De Smith's Judicial Review, 6th edn, p 479

For the appellant - Suzana Atan; AG's Chambers
D *For the respondent - Murad Ali Abdullah (Rajinder Singh & Muhammad Hisham with him); M/s Morthi, Segaran & Co*

[Appeal from High Court, Seremban; Civil Suit No: 22-140-1994]

Reported by Amutha Suppayah

E

JUDGMENT

Abu Samah Nordin JCA:

F

[1] This was an appeal by the appellants against the decision of the High Court, Seremban which declared the dismissal of the respondent by the third appellant as unlawful, null and void and of no effect and that he was entitled to his salary, emoluments and benefits as an inspector of police. The High Court also made an
G order that an enquiry be held before the Deputy Registrar/Senior Assistant Registrar to determine the total amount of salary, emolument and benefits accrued to him.

[2] It would be useful to revisit the facts in this case before we
H deal with the substantive appeal. The respondent joined the police force on 14 April 1979 as a probationary inspector. He was confirmed in his post on 14 April 1982. Between January 1982 and June 1991 he was the investigation officer in the secret societies section of the Police Contingent Headquarters, Negeri Sembilan. In
I recognition of his selfless services he received two letters of

commendation from two successive Chief Police Officers of the state. The first one was on 25 March 1984. The second one was on 25 March 1989. A

[3] It is not uncommon that being directly involved in investigation into secret society activities, one would not be free from blame or accusations. It happened to him. Complaints were made against him to his superiors. He was nevertheless cleared of those allegations by his superiors. B

[4] This was what the Director of Criminal Investigations, writing on behalf of the Inspector General of Police, said in paras. 2 and 3 of his letter dated 26 April 1989 to the then Chief Police Officer, Negeri Sembilan: C

> 2. Setelah meneliti laporan tuan tersebut terutamanya lampiran A, B, C, H, I dan J maka adalah jelas kepada pentadbiran ini bahawa Insp. Teh Chai Huat telah melaksanakan tugasnya dengan dedikasi dan gigih. Akibat tindak tanduknya itu beberapa orang awam yang terlibat dalam penganjuran judi dan sebagainya telah diambil tindakan undang-undang sekatan dan tidak hairanlah jika ada diantara mereka berasa marah, sakit hati dan mendendam pegawai ini. D E
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> 3. Seharusnya Insp. Teh Chai Huat tidak akan lemah semangat di atas tomahan-tomahan yang diterima ataupun dilemparkan terhadapnya dan sebaliknya beliau harus meningkatkan azam membenteras apa jua bentuk maksiat dengan lebih tegas dan berkesan. F

[5] The respondent continued to serve in the same capacity as the investigation officer in the secret societies section until 30 June 1991. Between 1 July 1991 and 30 April 1995 he was given leave with half pay to study law at the International Islamic University, Kuala Lumpur. G

[6] It was during his period of study leave that he received the shocking news. On 4 October 1993 he was served with a show cause letter dated 27 September 1993 signed by one Mohd Yusof Said, on behalf of the fourth appellant, informing him that the fourth appellant had decided to commence disciplinary action against him pursuant to General Order 26 of the Public Officers (Conduct and Discipline) (Chapter D), General Orders 1980 ("General Orders 1980") with a view to his dismissal. The letter contained five charges of alleged breaches of discipline under General Orders 4(2)(f)(i) and (g) of the General Orders 1980. H I

[7] As these charges contain allegations spanning over a long period of time between January 1982 and September 1990 and the timing of the show cause letter coincided with the period of his study leave it is thus necessary to look at these charges in order to understand them:

> 1.1 Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia, telah didapati tidak jujur iaitu anda telah menerima wang sogokan sebanyak RM1,000 sebulan antara tempoh 1 Jan 89 hingga 30 Jun 89, 1 Ogos 89 hingga 31 Jul 90 dan 1 Sept 90 hingga 18 Sept 90 daripada seorang lelaki Cina bernama Chong Lee Lin (KP: 0216980) di alamat No. 30 Jalan Tunku Munawir, Seremban, Negeri Sembilan untuk memberi perlindungan ke atas kegiatan empat ekor haram yang dijalankan olehnya di sekitar Bandar Seremban, Negeri Sembilan dan oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.
>
> 1.2 Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia, telah didapati tidak jujur iaitu anda telah menerima wang sogokan sebanyak RM200.00 sebulan antara tempoh 1 Jan 87 hingga 31 Mac 89 dan RM300.00 sebulan antara tempoh 1 APR 89 hingga 21 Sept 90 daripada seorang lelaki Cina bernama Khu Tee Sing (KP: 7695099) di sekitar Bandar Seremban, Negeri Sembilan untuk memberi perlindungan ke atas kegiatan empat ekor haram yang dijalankan olehnya di sekitar Bandar Seremban, Negeri Sembilan dan oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.
>
> 1.3 Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia, telah didapati berkelakuan yang dianggap sebagai membiarkan kepentingan persendirian anda bercanggah dengan kewajipan-kewajipan anda sebagai Inspektor di dalam Pasukan Polis Diraja Malaysia iaitu anda telah menjalinkan perhubungan dengan Chong Lee Lin (KP: 0216980) dan Khu Tee Sing (KP: 7695099) di antara tempoh 1 Jan 87 hingga 21 Sept 90 dengan mengetahui bahawa mereka adalah penganjur-penganjur kegiatan empat ekor haram yang bergiat di sekitar Bandar Seremban, Negeri Sembilan dan oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

1.4 Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia, telah didapati tidak bertanggungjawab iaitu anda telah tidak mengambil tindakan Polis ke atas Chong Lee Lin (KP: 0216980), Khu Tee Sing (KP: 7695099), Lue Chan Kong (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon (KP: 5146858) serta sindiket mereka di antara tempoh 1 Jan 82 hingga 21 SEPT 90 bersabit kegiatan haram yang dijalan oleh mereka di sekitar Bandar Seremban, Negeri Sembilan dan oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

1.5 Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia, telah didapati tidak bertanggungjawab iaitu anda telah tidak melaporkan kepada pegawai atasan anda mengenai kegiatan empat ekor haram yang dijalankan oleh Chong Lee Lin (KP: 0216980), Khu Tee Sing (KP: 7695099), Lue Chan Kong (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon (KP: 5146858) serta sindiket mereka di sekitar Bandar Seremban, Negeri Sembilan di antara tempoh 1 Jan 82 hingga 21 Sept 90 dan oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

[8] The respondent was given sixteen days from the date of receipt of the letter to make his written representation.

[9] In his ten page written representation, the respondent gave a long explanation complete with relevant facts and particulars which were contained in ten appendixes, namely Appendix A-K, denying all the allegations made against him. He claimed that those allegations were made by the complainants or persons who had been investigated for their involvement in four-digit illegal lottery and gambling activities. He had between 1 January 1982 and 31 December 1990 put up 59 investigation papers on secret societies activities, gambling and vice activities. He was gazetted as a gambling expert in Negeri Sembilan. As an expert he might have given evidence in court against them. He had also made numerous expert reports on gambling namely 175 reports in 1988, 85 reports in 1989 and 70 reports in 1990.

[10] He had, at the monthly meeting on the activities of secret societies in Negeri Sembilan constantly reminded the officers at the district levels to submit their respective reports on such activities at district levels or ticked them off for not submitting such reports. The minutes of these meetings also showed that even the chairman had to remind his officers at district levels.

[11] The respondent pointed out that the meetings had also, among others, discussed the involvement of Chong Lee Lin, Wee Loke Choon and Khu Tee Sing on illegal four-digit lottery activities and that he had recommended necessary actions be taken against them, including detention under the Restricted Residence Act 1933.

[12] As a result of the said actions, he believed that he had been victimized and that these persons were waiting for the right opportunity to destroy his career in the police force.

[13] Nevertheless on 31 January 1994 the respondent was formally informed in writing *via* a letter dated 25 January 1994, signed by one Dato' Yusof Said on behalf of the third appellant, that he was found in breach of all the disciplinary charges against him and that the sentence for each charge was that he be dismissed from the Police Force. The punishment was not what he had expected.

[14] Thus on 22 November 1994 the respondent filed a writ of summons against the appellants for declarations that his dismissal was unlawful, null and void and of no effect and that he was and still is an inspector of police, entitled to his salary, emoluments and such other benefits as a police inspector.

[15] The learned judge granted the declarations and orders sought after a full trial. He held that on the authority of *B. Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14; [1962] 1 MLJ 169, the respondent was not given a reasonable opportunity of being heard under art. 135(2) of the Federal Constitution and that there had been a breach of the rules of natural justice. The learned judge found that the dates of the alleged breaches of discipline spanned over a long period of time, some of which were over a period of more than ten years before the respondent received the show cause letter. The dates were chosen at random and made it difficult for the respondent to put up a proper

defence. The alleged breaches were related to offences of corruption. It was not known whether the complainant named in the charges were his accusers but if they were witnesses, it was only proper that the respondent be given the opportunity to know the nature of evidence against him and that he be allowed to cross-examine the witnesses. Further he was not supplied with any document relating to the charges. Although he failed to ask for any such document the learned judge was of the view that it was the fourth appellant's duty/responsibility to supply them in order to enable him to make an effective representation.

[16] The learned judge noted that even though the discretion whether or not to appoint a Committee of Inquiry was vested with the third/fourth appellant under General Order 26 para. 4 of the General Orders 1980, in the circumstances of this case the third/fourth appellant ought to have appointed a Committee of Inquiry to enable the respondent to defend himself effectively. As it was not done, there had been a breach of the rules of natural justice in the dismissal of the respondent.

[17] The General Orders 1980 regulates the conduct of officers in the public service in the performance their duties, a breach of which would render any officer in the public service to any of the punishments or a combination of such punishments as set out in General Order 36. The paramount objective is to maintain a clean and efficient public service with unimpeachable integrity, undivided loyalty and devotion to His Majesty and country: see General Order 4(1).

[18] In recognition of their loyalty and devotion to the public service the General Orders 1980 had introduced certain safeguards for their protection lest they are accused of any breach of discipline. These safeguards are contained in Part II and Part III of the General Orders 1980 under the headings 'Disciplinary Procedure' and 'Special Provisions' respectively.

[19] General Order 23 (subject to proviso therein) makes it mandatory that an officer shall not be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard. A similar phrase is used in art. 135(2) of the constitution and its meaning had been fully explained by the Privy Council in *B Surinder Singh Kanda v. The Government of Malaya* [1962] 1 LNS 14; [1962] MLJ 169.

[20] There, the appellant, an inspector of police, challenged his dismissal by the Commissioner of Police after he was found guilty of a disciplinary offence, on the ground that he was not given a reasonable opportunity of being heard under art. 135(2) of the constitution. The only issue that survived the arguments before the Privy Council was one complaint relating to the report of the Board of Enquiry. This report contained a severe condemnation of the appellant. It was sent to the adjudicating officer but the appellant never had it. He never had an opportunity of dealing with it until the fourth day of his trial. This report contained in detail the evidence of each witness heard by the Board of Enquiry and expressed views as to the credibility of each witness and the weight to be attached to his statement.

[21] The question was whether the hearing by the adjudicating officer was vitiated by his being furnished with the report without the appellant being given an opportunity of correcting or contradicting it. The Privy Council held that the appellant was not given a reasonable opportunity of being heard. Lord Denning, in his judgment at pp. 172-173 said:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, LC in *Board of Education v. Rice* (3) down to the decision of their Lordships' Board in *Ceylon University v Fernando* (4). It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing. Instances which were cited to their Lordships were *Re Gregson* (5), *Rex v. Bodmin Justices* (6) and *Good v. Evans* (7), to which might be added *Rex v. Architects Registration Tribunal* (8), and many others.

[22] Let us now look at the specific charges against the respondent. The fourth and fifth charges are interlinked. It was in respect of the respondent's failures to take action against the persons named in the charges for alleged illegal activities in or

around Seremban between 1 January 1982 and 21 September 1990 and to report their activities to his superior. These charges seemed to show that there had been a continuous failure by the respondent to take action against the persons named therein and to report to his superior of their illegal activities which spanned over a period of more than eight years. Yet the appellant was only asked to show cause with a view to his dismissal only in 1993, about eleven years after the alleged breaches of discipline, which first occurred in 1982.

[23] The first and second charges are even more serious. They relate to offences of corruption or bribery. In the first charge the respondent was alleged of corruptly accepting a sum of RM1,000 per month from one Chong Lee Min on the following dates:

(i) between 1 January 1989 - 30 June 1989;

(ii) between 1 August 1989 - 31 July 1990; and

(iii) between 1 September 1990 - 18 September 1990.

[24] The respondent explained that he was never present at the alleged address. In the second charge the respondent was alleged of corruptly accepting a sum of RM200 per month between 1 January 1987 and 30 March 1989; and a sum of RM300 per month between 1 April 1989 and 21 September 1990, from one Khu Tee Sing.

[25] In the third charge the respondent was accused of associating himself with Chong Lee Lin and Khu Tee Sing knowing that they were actively involved in illegal four-digit lottery in and around Seremban.

[26] It appeared that the respondent's superiors had sat idly for a long time without taking any action against him although he had been alleged of accepting monthly corrupt money since 1 January 1987 until 21 September 1990 from specific individuals. There was no evidence that the accusations against the respondent were only made recently. It is incomprehensible how those glaring facts could have escaped the attention of the trained and watchful eyes of his superiors. It is safe to assume that statements must have been taken from the complainants or the persons identified in the charges to substantiate the allegations against the respondent. Otherwise those allegations were just bare allegations devoid of any merit. The respondent did not know when those allegations were

made and had no idea what statements have been given to his superiors to enable him to correct or contradict the said statements. That put him in a disadvantageous position. He believed that those allegations were made by his accusers who had an axe to grind, as he was throughout his service in Negeri Sembilan, directly involved with investigation into secret societies activities, illegal gambling syndicate and vice activities. If the complaints against him were made after he went on a study leave, it would cast grave suspicion on the motives of his accusers. The only persons who knew the exact nature of the allegations and when they were made must be the third and/or fourth appellant apart from the Disciplinary Authority.

[27] There is no general right to an oral hearing under the General Orders 1980: see *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K. Perumal* [2001] 2 CLJ 525, *Najar Singh v. Government of Malaysia & Anor* [1974] 1 LNS 101, *Zainal bin Hashim v. Government of Malaysia* [1979] 1 LNS 132. Put it differently, a public servant facing disciplinary action under the General Orders 1980 is not, in all cases, entitled to an oral hearing. A fair hearing does not necessarily mean that there must be an opportunity to be heard orally. In *R (on the application of Ewing v. Department for Constitutional Affairs* [2006] 2 All ER 993 it was held that 'one is entitled to an oral hearing when fairness requires that there should be such a hearing, but fairness does not require that there should be an oral hearing in every case'. Whether an oral hearing is necessary will depend upon the subject matter and circumstances of the particular case and upon the nature of the decision to be made. It will also depend upon whether there are substantial issues of fact which can't be resolved on the available written evidence. This does not mean that, whenever there is a conflict of evidence in the statement taken, an oral hearing must be held to resolve it. See *R v. Army Board of Defence Council, exp. Anderson* [1991] 3 All ER 375 at p. 387.

[28] The framers of the General Orders 1980 had in their wisdom, saw it fit that there may be a need in appropriate cases for the Disciplinary Authority to seek further clarification. This intention is clearly expressed in General Order 26(5) of the General Orders 1980. General Orders 26(5) confers a discretion on the Disciplinary Authority to seek further clarification on the charges against the respondent through the appointment of a Committee of Inquiry. In

plain language, it means that there is no total ban or prohibition for an oral hearing under the General Orders 1980. It depends on the circumstances of each case: See *Ang Seng Wan v. Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 1 CLJ 493. It is not a precondition that oral hearing must be at the request of the officer concerned. It is at the discretion of the Disciplinary Authority.

[29] But is the discretion vested with the Disciplinary Authority an absolute and unfettered discretion? Raja Azlan Shah Ag. CJ (as he then was) in *Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143 answered it in the following terms:

> I cannot subscribe to this proposition for a moment. Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite (ante)* and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realized that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law.

[30] Lord Greene MR in *Associated Provincial Pictures Houses, Ltd v. Wednesbury Corporation* [1947] 2 All ER 680 at p. 682-683 said:

> The exercise of such discretion must be a real exercise of the discretion … For instance, a person entrusted with a discretion must direct himself properly in law. He must call his attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider.

[31] Lord Green's view in the abovesaid case was reaffirmed by the House of Lords in *Padfield and Others v. Minister of Agriculture and Food and others*: See Lord Denning's judgment [1968] AC 997 at p. 1007.

[32] In *Breen v. Amalgated Engineering Union and others* [1971] 2 QB 175, Lord Denning MR at p. 190 said, "It is now well settled that a statutory body which is entrusted by statute with a discretion, must act fairly. Later at the same page, his Lordship added:

> If the rules set up a domestic body and give it a discretion, it is to be implied that the body must exercise its discretion fairly. Even though its functions are not judicial or quasi judicial, but only administrative, still it must act fairly. Should it not do so, the courts can review its decision, just as it can review the decision of a statutory body.

[33] So, how do you determine whether a body entrusted with discretion had acted fairly? Taylor LJ in *R v. Army Board of the Defence Council, exparte Anderson* [1991] 3 All ER 375 endorsed what Lord Bridge in *Lloyd v. McMahon* [1987] All ER 1118 at p. 1161 said:

> My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better express the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

[34] *De Smith's Judicial Review*, 6th edn, at p. 479 concisely sums up the law thus:

> A decision-making body exercising public functions which is entrusted with discretion must not, by the adoption of a fixed rule or policy, disable itself from exercising its discretion in individual cases. It may not "fetter" its discretion. A public authority that does fetter its discretion in that way may offend against either or both of two grounds of judicial review: the ground of legality and the ground of procedural propriety. The public authority offends against legality by failing to use its powers in the way they were intended, namely, to employ and to utilize the discretion conferred upon it. It offends against procedural propriety by failing to permit affected persons to influence the use of that discretion. By failing to "keep

its mind ajar", by "shutting its ears" to an application, the body in question effectively forecloses participation in the decision-making process.

[35] In *Chai Kok Choi Ketua Polis Negara & Ors* [2008] 1 CLJ 113 the Federal Court was asked to decide on the following question of law:

> Is it within the purview of the Court to hold in any particular case that the facts and surrounding circumstances require the disciplinary authority to afford the applicant an oral hearing so as to meet the requirements of procedural fairness when it is obvious that crucial matters in favour of the applicant were not taken into account or considered by the said disciplinary authority in the disciplinary process?

[36] The Federal Court at p. 121 answered that, "An oral hearing might have been necessary if the applicant had not admitted committing the offences". Thus, it is implicit that the Disciplinary Authority's discretion is not absolute. In *Ghazi Mohd Sawi v. Mohd Hanif Omar, Ketua Polis Negara Malaysia & Anor* [1994] 2 CLJ 333 the Supreme Court (as it then was) in dismissing the appellant's contention that he was not given an oral hearing, did not altogether rule out the possibility of an oral hearing if there had been a breach of the rules of natural justice or failure to apply the Wednesbury principles of unreasonableness (see p. 342). In *Ang Seng Wan v. Suruhanjaya Polis Di Malaysia & Anor* [2002] 1 CLJ 493 the Court of Appeal allowed the appellant's appeal against his dismissal by the first respondent on the ground, *inter alia*, that there was a failure to hold an oral hearing when the facts in that case justify the holding of an oral hearing. In that case the appellant denied receiving bribes through one Sanmugan. Sanmugan however made a statutory declaration denying accepting the bribes on behalf of the appellant.

[37] The facts before us are not dissimilar with the facts in *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 except that in that case there was a request for an oral hearing. There, the appellant, a police inspector was posted to Negeri Sembilan Police Contingent Headquarters as a training officer. He was hauled up before the disciplinary board for several charges. The first charge was that he received monthly corrupt money of RM200 from one Chong Lee Lin from 1 August 1989 to 22 September 1990. The

second charge was for receiving monthly corrupt money of RM100 one Lue Chan Kong between 1 June 1989 and 22 September 1989. The third charge was for associating himself with one Chong Lee Lin between 1 August 1989 and 22 September 1990 knowing that she was an organizer of illegal four-digit lottery in or around Seremban. He was found guilty on all the charges and dismissed from the police force. His request for an oral hearing was turned down. He applied to the High Court for a declaration that his dismissal was null and void. It was dismissed. On appeal, the Court of Appeal allowed his appeal. Ariffin Zakaria JCA (as he then was) said:

> [26] In the circumstances, after considering the charges levelled against the plaintiff, we are of the view that in all fairness the plaintiff ought to have been given an oral hearing as requested by him. Similarly documentary and other evidence purportedly relied upon by the first defendant in arriving at his finding ought to have been made available to him to enable the plaintiff to make an effective and meaningful defence to the charges. In the circumstances we agree with the plaintiff's counsel that there had been a clear breach of the rules of natural justice as embodied in art. 135(2) of the Federal Constitution which renders the disciplinary proceedings null and void. In this regard we are reminded of the observation made by Lord Denning in *B. Surinder Singh Kanda v. The Government of The Federation of Malaya* [1962] 1 LNS 14; [1962] 28 MLJ 169, at page 172 which reads:
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> > If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, LC in *Board of Education v. Rice* [1911] AC 179. 182; 27 TLR 378) down to the decision of their Lordships Board in *Ceylon University v. Fernando* [1960] 1 WLR 223; [1960] 1 All ER 631, PC).

[38] Apparently Chong Lee Lin and Lue Chan Kong were also the same characters who were identified in the charges against the appellant in *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 and the appellant in *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor* [2008] 4 CLJ 881. In *Mat Ghaffar* case, the appellant, a police inspector, was charged and dismissed for

receiving bribes from them at about the same time, namely, between 1 August 1988 and September 1990 at the same address, namely, No. 30 Jalan Tuanku Munnawar, Seremban. These facts were stated in the charges which appeared in the appellant's statement of claim against the respondents.

[39] In *Yusof Sudin* case, an Assistant Superintendent of Police attached to the Police Contingent Headquarters, Negeri Sembilan, was slapped with five disciplinary charges and dismissed from the police force. These charges were reproduced in the judgment of the Court of Appeal. The place where the appellant was alleged to have accepted the bribe was also at No. 30 Jalan Tunku Munnawar, Seremban.

[40] From the perusal of the charges in the two cases above and the charges in this instant appeal it appeared that there was no doubt that Chong Lee Lin and Lue Chan Kong were actively involved in the syndicate on illegal four digits lottery in Seremban. Ironically, that led to the police officers being disciplined and dismissed from the police force.

[41] Let us now turn to the facts in the instant appeal. Was there sufficient material before the Disciplinary Authority for it to consider that the respondent's case would require further clarification and the setting up of a Committee of Inquiry?

[42] It seemed that the respondent's tenure as an investigation officer in the Police Contingent Headquarters Negeri Sembilan was full of trials and tribulations. The respondent had to cope with a myriad of allegations basically due to the nature of his work. The unfounded allegations levelled against him and the facts which formed the basis of disciplinary charges against him, all happened at or about the same time. Yet the respondent persevered and his services were duly recognised when he received letters of commendations from two successive State Police Officers. But there were evil forces working against him. One thing was however clear. The allegations against the respondent which turned out to be untrue or unsubstantiated and the facts which formed the basis of the disciplinary charges against him were within the knowledge of the third or fourth appellant. The Director of Criminal Investigations who cleared him of the allegations, wrote the letter dated 26 April 1989 on behalf of the third appellant. The show

A cause letter dated 27 September 1993 was signed by one Mohd Yusuf Said on behalf of the fourth appellant. The respondent's reply to the show cause letter was addressed to the third appellant. In short, all the information in favour of and against the respondent were already within the knowledge of his superiors in Bukit Aman
B police headquarters. Based on that information they should be able to weigh and evaluate the evidence against the respondent fairly and justly and decide whether or not to seek further clarification from the respondent.

C **[43]** We have read the respondent's written representation and verified its contents with the facts and particulars in Appendixes A to K. These appendixes contained the monthly minutes of the meetings held at the Police Contingent Headquarters at Seremban. What the respondent said in his written representation were
D substantiated by the minutes of the meetings. The involvement of Chong Lee Lin and Lue Chan Kong, among others, in secret societies activities and illegal gambling syndicate were discussed at the monthly meetings and the respondent had in fact recommended appropriate actions be taken against them, including detention under
E the Restricted Residence Act 1933. What the respondent said in his written representation was not just bare denials. He had also earlier been cleared of somewhat similar allegations. That was a factor in his favour.

F **[44]** The allegations of fact in the present charges against him spanned over several years. There was a long and unexplained delay in instituting disciplinary action against him. He had been told that the show cause letter was with a view to his dismissal. It must be borne in mind that there is no remedy for appeal under the
G General Orders 1980. The decision that the Disciplinary Authority was about to make, in view of the gravity of the charges against him would be irreversible. The long delay in issuing the show cause letter and in instituting the disciplinary action against the respondent is not by itself a ground for holding that there was
H procedural unfairness (*Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu* [2008] 6 CLJ 573). But when it is viewed together with the other facts as adverted to earlier it should have prompted an alert Disciplinary Authority to call for further clarification to ascertain the truth of the allegations against the
I respondent.

[45] In the circumstances of this case we were of the view that the Disciplinary Authority, in exercise of its discretion, had not fairly or adequately considered the written representation by the respondent. It had not fully weighed and appreciated the respondent's representation which was not mere denials. By failing to keep an open mind and to consider calling him for further clarification the Disciplinary Authority had effectively closed its doors to the respondent and in the process fettered its own discretion. Thus, the respondent was denied the reasonable opportunity to have his case heard before the Disciplinary Authority.

[46] For the aforesaid reasons, we dismissed the appeal with costs.